



**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO 1995 ASSEMBLY BILL 441**

September 28, 1995 – Offered by Representative JENSEN.

1 **AN ACT** *to amend* 48.375 (4) (a) 1. and 448.02 (3) (a); *to repeal and recreate*
2 46.245 and 253.10; and *to create* 69.186 (1) (j) of the statutes; **relating to:**
3 expanding requirements for a woman’s informed consent for performance or
4 inducement of an abortion and for consent to a minor’s obtaining an abortion
5 and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 46.245 of the statutes is repealed and recreated to read:
7 **46.245 Information for certain pregnant women.** A county department
8 under s. 46.215, 46.22 or 46.23 shall do all of the following:
9 **(1)** Upon request, distribute the materials described under s. 253.10 (2) (c), as
10 prepared and distributed by the department. The county department may charge
11 a fee not to exceed the actual cost of preparation and distribution of the materials.
12 A physician who reasonably believes that he or she might have a patient for whom
13 the information under s. 253.10 (2) (c) is required to be given, shall request a
14 reasonably adequate number of the materials from the county department under

1 this subsection or from the department under s. 253.10 (2) (c) 3. An individual may
2 request a reasonably adequate number of the materials.

3 (2) In any county in which a hospital, clinic or other facility in which abortions
4 are performed is located, prepare the list specified under s. 253.10 (2) (d) and
5 distribute the list to each of those hospitals, clinics or other facilities.

6 **SECTION 2.** 48.375 (4) (a) 1. of the statutes is amended to read:

7 48.375 (4) (a) 1. The person or the person's agent has, either directly or through
8 a referring physician or his or her agent, received and made part of the minor's
9 medical record, under the requirements of s. 253.10, the voluntary and informed
10 written consent of the minor and the voluntary and informed written consent of one
11 of her parents; or of the minor's guardian or legal custodian, if one has been
12 appointed; or of an adult family member of the minor; or of one of the minor's foster
13 parents or treatment foster parents, if the minor has been placed in a foster home
14 or treatment foster home and the minor's parent has signed a waiver granting the
15 department, a county department, the foster parent or the treatment foster parent
16 the authority to consent to medical services or treatment on behalf of the minor.

17 **SECTION 3.** 69.186 (1) (j) of the statutes is created to read:

18 69.186 (1) (j) If the patient is a minor, whether consent was provided under s.
19 48.375 (4) (a) 1. for the abortion and, if so, the relationship of the individual providing
20 consent to the minor; or, if consent under s. 48.375 (4) (a) 1. was not provided, on
21 which of the bases under s. 48.375 (4) (a) 2. or (b) 1., 1g., 1m., 2. or 3. the abortion was
22 performed.

23 **SECTION 4.** 253.10 of the statutes is repealed and recreated to read:

24 **253.10 Informed consent for abortions. (1) DEFINITIONS.** In this section:

25 (a) "Abortion" has the meaning given in s. 48.375 (2) (a).

1 (b) "Agency" means a private nonprofit organization or a county department
2 under s. 46.215, 46.22 or 46.23.

3 (c) "Medical emergency" means a condition, in a physician's reasonable medical
4 judgment, that so complicates the medical condition of a pregnant woman as to
5 necessitate the immediate abortion of her pregnancy to avert her death or for which
6 a 24-hour delay in performance or inducement of an abortion will create serious risk
7 of substantial and irreversible impairment of one or more of the woman's major
8 bodily functions.

9 (d) "Probable gestational age of the unborn child" means the number of weeks
10 that have elapsed from the probable time of fertilization of a woman's ovum, based
11 on the information provided by the woman as to the time of her last menstrual period,
12 her medical history, a physical examination performed by the physician who is to
13 perform or induce the abortion or by any other qualified physician and any
14 appropriate laboratory tests performed on her.

15 (e) "Unborn child" means a human being from fertilization until birth.

16 **(2) INFORMED CONSENT.** (a) *Generally.* No abortion may be performed or induced
17 except with the voluntary and informed consent of the woman upon whom the
18 abortion is to be performed or induced and, if the woman is a minor and s. 48.375 (4)
19 (a) 2. does not apply, the individual who also gives consent under s. 48.375 (4) (a) 1.
20 Except in the case of a medical emergency, consent to an abortion is voluntary and
21 informed only if:

22 1. The woman is provided, at least 24 hours before the abortion, with all of the
23 following information by the physician who is to perform the abortion or by the
24 referring physician but not by the agent or representative of either.

25 a. The name of the physician who will perform the abortion.

1 b. The fact that there may be detrimental physical and psychological effects
2 which are not accurately foreseeable.

3 c. The particular medical risks associated with the particular abortion
4 procedure to be employed including, when medically accurate, the risks of infection,
5 hemorrhage, danger to subsequent pregnancies and infertility.

6 d. The probable gestational age of the unborn child at the time the abortion is
7 to be performed.

8 e. The medical risks associated with carrying her child to term.

9 2. The woman is informed of all of the following, by the physician or by his or
10 her agent, at least 24 hours before the abortion:

11 a. The fact that medical assistance benefits may be available for prenatal care,
12 childbirth and neonatal care.

13 b. The fact that the father is liable to assist in the support of her child, even in
14 instances where the father has offered to pay for the abortion.

15 c. That she has the right to review the printed materials described in par. (c).
16 The physician or his or her agent shall orally inform the woman that the materials
17 describe the unborn child and list agencies that offer alternatives to abortion. If the
18 woman chooses to view the materials, copies of them shall be furnished to her. If the
19 woman is unable to read the materials furnished her, the materials shall be read to
20 her. If the woman seeks answers to questions concerning any of the information or
21 materials, answers shall be provided her in her own language.

22 3. The woman certifies in writing, prior to the abortion, that the information
23 described in subds. 1. and 2. has been furnished her, and that she has been informed
24 of her opportunity to review the information referred to in subd. 2.

1 4. Prior to the performance of the abortion, the physician who is to perform or
2 induce the abortion or his or her agent receives a copy of the written certification
3 required under subd. 3.

4 (b) *Medical emergency.* If a medical emergency compels the performance of an
5 abortion, the physician shall inform the woman, prior to the abortion if possible, of
6 the medical indications supporting his or her judgment that an abortion is necessary
7 to avert the woman's death.

8 (c) *Printed information.*

9 1. The department shall cause to be published in English, Spanish and
10 Vietnamese, by the date that is 60 days after the effective date of this subdivision
11 [revisor inserts date], the following easily comprehensible printed materials:

12 a. Geographically indexed materials designed to inform the woman of public
13 and private agencies and services available to assist a woman through pregnancy,
14 upon childbirth and while the child is dependent, including adoption agencies, which
15 shall include a comprehensive list of the agencies available, a description of the
16 services they offer and a description of the manner, including telephone numbers, in
17 which they might be contacted, or, at the option of the department, printed materials
18 including a toll-free, 24-hour a day telephone number which may be called to obtain,
19 orally, such a list and description of agencies in the locality of the caller and of the
20 services they offer. The materials shall include the statement: "There are many
21 public and private agencies willing and able to help you to carry your child to term,
22 and to assist you and your child after your child is born, whether you choose to keep
23 your child or to place her or him for adoption. The State of Wisconsin strongly urges
24 you to contact them before making a final decision about abortion. The law requires

1 that your physician or his or her agent give you the opportunity to call agencies like
2 these before you undergo an abortion.”

3 b. Materials designed to inform the woman of the probable anatomical and
4 physiological characteristics of the unborn child at a-week gestational increments
5 from fertilization to full term, including any relevant information on the possibility
6 of the unborn child’s survival. The materials shall be objective, nonjudgmental and
7 designed to convey only accurate scientific information about the unborn child at the
8 various gestational ages.

9 2. The materials under this paragraph shall be printed in a typeface large
10 enough to be clearly legible.

11 3. The materials required under this paragraph shall be available at no cost
12 from the department upon request and in appropriate number to any person, facility
13 or hospital.

14 (d) *List upon request.* Upon request of the woman receiving information under
15 par. (c), the physician shall provide the woman with the list distributed under s.
16 46.245 (2) by a county department. The list shall specify public and private agencies
17 and services that are available to provide the woman with birth control information,
18 including natural family planning information.

19 (e) *Requirement to obtain materials.* A physician who reasonably believes that
20 he or she might have a patient for whom the information under par. (c) is required
21 to be given shall request a reasonably adequate number of the materials that are
22 described under par. (c) from the department under par. (c) or from a county
23 department as specified under s. 46.245 (1).

24 **(3) UNPROFESSIONAL CONDUCT.** Violation of this section by a physician
25 constitutes unprofessional conduct.

1 **(4) PENALTY.** Whoever, other than a physician, is required to provide
2 information under sub. (2) and fails to provide the information may, for the first
3 offense, be required to forfeit not more than \$1,000 and may, for the 2nd or
4 subsequent offense, be fined not more than \$10,000 or imprisoned for not more than
5 9 months or both.

6 **(5) LIMITATION ON CIVIL LIABILITY.** No physician who complies with this section
7 may be held civilly liable to his or her patient for failure to obtain informed consent
8 to the abortion.

9 **SECTION 5.** 448.02 (3) (a) of the statutes is amended to read:

10 448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct
11 and negligence in treatment by persons holding a license, certificate or limited
12 permit granted by the board. An allegation that a physician has violated s. 253.10
13 (2), 448.30 or 450.13 (2) or has failed to mail or present a medical certification
14 required under s. 69.18 (2) within 21 days after the pronouncement of death of the
15 person who is the subject of the required certificate or that a physician has failed at
16 least 6 times within a 6-month period to mail or present a medical certificate
17 required under s. 69.18 (2) within 6 days after the pronouncement of death of the
18 person who is the subject of the required certificate is an allegation of unprofessional
19 conduct. Information contained in reports filed with the board under s. 49.45 (2) (a)
20 12r., 50.36 (3) (b), 609.17 or 632.715 or under 42 CFR 1001.109 (e) and 42 CFR
21 1001.124 (a) (3) and (b) shall be investigated by the board. Information contained
22 in a report filed with the board under s. 655.045 (1), as created by 1985 Wisconsin
23 Act 29, which is not a finding of negligence or in a report filed with the board under
24 s. 50.36 (3) (c) may, within the discretion of the board, be used as the basis of an
25 investigation of the persons named in the reports. The board may require a person

1 holding a license, certificate or limited permit to undergo and may consider the
2 results of one or more physical, mental or professional competency examinations if
3 the board believes that the results of any such examinations may be useful to the
4 board in conducting its investigation.

5 (END)